

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In re REFCO, INC.	:	
	:	
PAUL PALLEY,	:	
Appellant,	:	
	:	07 Civ 04784 (DLC)
-v-	:	
	:	
REFCO, INC.	:	
Appellee.	:	
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REQUEST BY APPELLEE FOR: (I) CONSOLIDATION OF RELATED
BANKRUPTCY APPEALS, CASE NOS. 07-CV-04784 (DLC), 07-CV-04785
(LAK), AND 07-CV-04786 (CM); (II) REVISED BRIEFING SCHEDULE;
AND (III) LEAVE TO FILE A CONSOLIDATED APPELLEE BRIEF

RJM, LLC, as Plan Administrator (the “Plan Administrator” or “Appellee”) for the Refco F/X Associates, LLC (“FXA”) and the other debtors (collectively, with FXA, the “Reorganized Debtors”)¹ in the above-captioned cases (other than for Refco Capital Markets, Ltd.) under the Modified Joint Chapter 11 Plan of Refco, Inc. and Certain of Its Direct and Indirect Subsidiaries (the “Plan”), respectfully submits this request for: (i) the transfer of bankruptcy appeals case nos. 07-cv-04785 (LAK) and 07-cv-04786 (CM) for consolidation with bankruptcy appeal case no. 07-cv-04784 (DLC), pursuant to Rule 15 of the Rules for the Division of Business Among District Judges (Southern District); (ii) a revised briefing schedule; and (iii) permission to file a consolidated appellate brief, and respectfully represents as follows:

¹ The other Reorganized Debtors are as follows: Bersec International LLC; Kroeck & Associates, LLC; Lind-Waldock Securities LLC; Marshall Metals LLC; New Refco Group Ltd., LLC; Refco Administration LLC; Refco Capital Holdings LLC; Refco Capital LLC; Refco Capital Management LLC; Refco Capital Trading LLC; Refco Finance Inc.; Refco Financial LLC; Refco Fixed Assets Management LLC; Refco Global Capital Management LLC; Refco Global Finance Ltd.; Refco Global Futures LLC; Refco Global Holdings LLC; Refco Group Ltd., LLC; Refco Inc.; Refco Information Services LLC; Refco Managed Futures LLC; Refco Mortgage Securities, LLC; Refco Regulated Companies LLC; Summit Management LLC; and Westminster-Refco Management LLC.

RELEVANT BACKGROUND

1. On October 17, 2005 (the “Petition Date”), the Debtors, filed voluntary petitions in the Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) for relief under chapter 11 of title 11 of the United States Code.

2. On December 15, 2006, the Bankruptcy Court entered its Findings of Fact, Conclusions of Law, and Order Confirming the Joint Modified Chapter 11 Plan of Refco Inc. and Certain of its Direct and Indirect Subsidiaries (the “Confirmation Order”). In accordance with the terms of the Plan, the Plan became effective on December 26, 2006.

3. Pursuant to the Plan, Confirmation Order and applicable agreements, the Plan Administrator was appointed to manage the wind-down of the Reorganized Debtors.

4. On February 9, 2007, the Plan Administrator filed in the Bankruptcy Court the Omnibus Objection to Requests for Payment of Administrative Expense Claims Related to Post-Petition Increases in FXA Client Account Balances.

5. After a hearing held on April 11, 2007, the Bankruptcy Court entered an Order Disallowing Requests for Payment of Administrative Expense Claims Related to Post-Petition Increases in FXA Client Account Balances on April 19, 2007 (the “April 19 Order”).

6. On April 30, 2007, Paul Palley and Mark Resnick each filed separate notices of appeal of the April 19 Order (the “Palley Appeal” and “Resnick Appeal”, respectively).

7. On May 9, 2007, David Bilodeau, 4218698 Canada Inc./David Bilodeau and 9016-2355 Quebec Inc./Rene Bilodeau filed an amended notice of appeal of the April 19 Order, amending and replacing a notice of appeal filed on May 8, 2007 (the “Bilodeau Appeal”).

8. On June 5, 2007, each of the Palley Appeal, Resnick Appeal and Bilodeau Appeal was filed and docketed with this Court, however, each appeal was assigned to a different

judge of this Court. The Palley Appeal, case no. 07-cv-04784, has been assigned to Hon. Denise L. Cote. The Resnick Appeal, case no. 07-cv-04785, has been assigned to Hon. Lewis A. Kaplan. The Bilodeau Appeal, case no. 07-cv-04786, has been assigned to Hon. Colleen McMahon.

9. On July 6, 2007, this Court entered an order: (i) treating Appellant Palley's Statement of Issues as the appellant's brief; (ii) ordering Appellee to submit its Appellee's brief by July 20, 2007 and (iii) ordering Appellant Palley to submit his reply brief by August 3, 2007 (the "July 6, 2007 Order").

REQUEST FOR CONSOLIDATION

10. Appellee respectfully submits that the Palley Appeal, Resnick Appeal and Bilodeau Appeal are related and requests that the cases be consolidated pursuant to Rule 15 of the Rules for the Division of Business Among District Judges (Southern District), so that the Resnick Appeal and Bilodeau Appeal are transferred to and consolidated with the Palley Appeal.

11. The facts and bases underlying each of the Palley Appeal, Resnick Appeal and Bilodeau Appeal are substantially similar among the three (3) appellants. Each appellant appeals from the Bankruptcy Court's April 19 Order denying each of their requests for payment of an alleged administrative claim based on post-petition increases in their respective account balances at FXA resulting from post-petition trading in their respective accounts.

12. The legal standard to be considered in each of the Palley Appeal, Resnick Appeal and Bilodeau Appeal is the same: whether the Bankruptcy Court correctly or incorrectly applied the standard to establish entitlement to administrative expense priority under section 507(a)(2) of the Bankruptcy Code.

13. Consolidation of the Palley Appeal, Resnick Appeal and Bilodeau Appeal would result in substantial saving of judicial resources. Only one judge of the Court would be

involved in reviewing the substantially similar facts and considering the same issue of law in respect of each appeal. Significantly, consolidation would avoid disparate rulings on the same issue in each appeal.

14. Consolidation of the Palley Appeal, Resnick Appeal and Bilodeau Appeal would also result in the efficient and economical conduct of the litigations. These costs and expenses are being paid from the limited estate assets and property of FXA. The defense of each of the appeals, if tried separately, would result in increased litigation costs and potentially duplicative work in respect of the separate appeals.

15. In addition, consolidation of the Palley Appeal, Resnick Appeal and Bilodeau Appeal would result in greater convenience for the litigants and the Court with respect to service of pleadings, and coordination of scheduling and joint hearings.

**REQUEST FOR REVISED BRIEFING SCHEDULE AND
PERMISSION TO FILE CONSOLIDATED APPELLEE BRIEF**

16. In light of this Court's July 6, 2007 Order and this request for consolidation of the Palley Appeal, Resnick Appeal and Bilodeau Appeal, the Plan Administrator respectfully requests a two (2) week extension of the briefing schedule set forth in the July 6, 2007 Order, including an extension of time for the submission of Appellee's brief from July 20, 2007 to August 3, 2007, and a corresponding extension of time for the submission of a reply by the appellant from August 3, 2007 to August 17, 2007 to avoid any prejudice to the parties. Further, should the Court consolidate the Palley Appeal, Resnick Appeal and Bilodeau Appeal, the Plan Administrator is prepared to treat each of the appellants' (Palley, Resnick and Bilodeau) Statement of Issues as the appellants' briefs and respectfully requests permission to file a consolidated brief in response to the appellants' briefs.

CONCLUSION

WHEREFORE, the Plan Administrator respectfully requests that the Court:

(i) transfer the Resnick Appeal, case no. 07-cv-04785, and Bilodeau Appeal, case no. 07-cv-04786, for consolidation with the Palley Appeal, case no. 07-cv-04784; (ii) extend the time in which to submit Appellee's brief and appellant's reply brief; and (iii) should the Court consolidate the Palley Appeal, Resnick Appeal and Bilodeau Appeal, permit the Appellee to submit a consolidated brief; and (iv) grant the Plan Administrator such other and further relief as is just and proper.

Dated: July 10, 2007
New York, New York

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